IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.174 OF 1993.

Vijay Majoor Co-operative
Society, Yedrav Tal.Mangalwedha : Petitioner

versus

The Assistant Registrar,
Co-operative Societies,
Mangalwedha : Respondent.

Mr.V.B.Rajure for the petitioner.
Mr.A.P.Vanarase, AGP, for the respondent.

CORAM : D.G.DESHPANDE, J.

DATED : September 21, 2006.

ORAL ORDER

1. Heard learned advocate Mr.Rajure for the petitioner and learned AGP Mr.Vanarase for the respondent. Petitioner is the co-operative society. The Assistant Registrar, Co-operative Societies Mangalwedha passed an order on

29.12.1990 under Section 102(1) (c)(4) of the Maharashtra Co-operative Societies Act. Firstly temporary order was passed. Then the petitioner/society was called upon to give explanation why the society should not be wound up. They gave their explanation within one month. The Assistant Registrar found that the explanation was not proper and satisfactory and, therefore, he passed final order of winding up of the petitioner/society. The petitioner/society challenged this order of the Assistant Registrar dated 29.12.1990 before the Minister for Cooperation by filing an appeal under Section 104 of the Maharashtra Cooperative Societies Act, 1960. The Minister heard the appeal and dismissed the same by his order dated 21.8.1992.

2. Learned advocate Mr.Rajure contended that the mandatory provisions of Section 102 were not followed by the Assistant Registrar before passing the final order. He drew my attention to Section 102 (2) of the said Act. Section 102(2) reads as under :-

> "A copy of such order made under sub-section (1) shall be communicated, in

> the prescribed manner, to the society calling upon it to submits its explanation to the Registrar within a month from the date of the issue of such order, and the Registrar, on giving an opportunity to the society [and to the creditors of the society, if any] of being heard, may issue a final order, vacating or conforming the interim order."

Learned Advocate Mr.Rajure appearing for the petitioner/society contended that firstly the Registrar had to issue notice giving one month's time to the society to give their explanation and thereafter the Registrar was legally bound to give an opportunity of being heard. Admittedly no opportunity of being heard was given to the petitioner/society before passing the final order and, therefore, this order of the Assistant Registrar and the subsequent confirmation of the same by the Minister is required to be declared as illegal.

3. The learned AGP could not support the order of the Assistant Registrar and, the order

does not show that any opportunity of being heard was given to the petitioner/society to put forth their case. Same grievance has been made by the petitioner/society in this petition and also before the Minister. This aspect of the matter was not at all considered by the Minister.

4. On the face of it, both the orders of the Assistant Registrar and the Minister are wrong. The petition is required to be allowed. Hence the following order :-

:ORDER:

The petition is allowed.

The impugned order of the Minister and the earlier order of the Assistant Registrar dated 29.12.1990 at Exhibit A to the petition are set aside.

If the Assistant Registrar so thinks fit even today to proceed against the petitioner/society in pursuance of his earlier notice under Section 102, he will give an opportunity to the

petitioner/society of putting forth their case again and then will hear the petitioner/society in that regard and thereafter the Assistant Registrar may pass an appropriate order under Section 102.

Learned Advocate Mr.Rajure appearing for the petitioner/society agrees to communicate this order to the Assistant Registrar within two weeks from today and after obtaining certified copy, the Assistant Registrar to take appropriate steps in the light of the order stated above.

Rule is made absolute in the aforesaid terms.

No order as to costs.

[D.G.DESHPANDE, J.]